

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ARTURO BOYCE,	:	
	:	
Petitioner,	:	No. 4: CV-09-02254
	:	
v.	:	(McClure, J.)
	:	
ERIC HOLDER, et al.,	:	(Magistrate Judge Blewitt)
	:	
Respondents.	:	

**MEMORANDUM**

March 9, 2010

**INTRODUCTION:**

On November 16, 2009, petitioner Arturo Boyce, a detainee in the custody of United States Immigration and Customs Enforcement (“ICE”) at the York County Prison (“YCP”), filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Rec. Doc. No. 1). Initially, Boyce named as respondents Mary Sabol, Warden at YCP; Thomas Decker, ICE District Director; John Torres, Acting Assistant Secretary of ICE; Janet Napolitano, Secretary of the Department of Homeland Security (“DHS”); and Eric Holder, United States Attorney General.

Id. at 3. Boyce is challenging his continued detention by ICE since the issuance of a final order of removal on December 10, 2008, and claims that this continued detention has violated his procedural and substantive due process rights. Id. at 6-7.

Boyce asks that this Court direct respondents to immediately release him from custody, enter injunctive relief enjoining the respondents from continuing to detain him, and award him attorney's fees and costs. Id. at 8.

### **BACKGROUND:**

In conjunction with his petition for habeas corpus, Boyce also filed an Application for Issuance of Order to Show Cause, in which he requested, pursuant to 28 U.S.C. § 2243, that this Court issue an order requiring the respondents to show cause why his petition for writ of habeas corpus should not be granted. (Rec. Doc. No. 2). Boyce also filed a motion for leave to proceed in forma pauperis and a motion to appoint counsel. (Rec. Doc. Nos. 3 and 4).

The case was initially referred to Magistrate Judge Thomas M. Blewitt. On November 18, 2009, Magistrate Judge Blewitt denied Boyce's motion to appoint counsel. (Rec. Doc. No. 5). On December 1, 2009, the magistrate judge denied Boyce's motion for leave to proceed in forma pauperis. (Rec. Doc. No. 10). The magistrate judge, on December 3, 2009, issued an order to show cause on respondents, requiring that they show cause why Boyce's petition for habeas corpus should not be granted. (Rec. Doc. No. 12).

On December 23, 2009, respondents filed a response to Boyce's petition for writ of habeas corpus. (Rec. Doc. No. 22). On January 2, 2010, Christina L.

Powers, Esq., entered her appearance as pro bono counsel for petitioner Boyce. (Rec. Doc. No. 24). On January 3, 2010, Boyce, through counsel, filed a reply to respondents' December 23, 2009 response. (Rec. Doc. No. 25).

On February 18, 2010, Magistrate Judge Blewitt issued his Report and Recommendation. (Rec. Doc. No. 26). In his Report and Recommendation, the magistrate judge recommended that Boyce's petition for a writ of habeas corpus be denied as to his claim that his continued detention is violative of 8 U.S.C. § 1231(a)(6). Id. at 5-9. In addition, the magistrate judge recommended that Boyce's due process claims be denied. Id. at 10-11. However, the magistrate judge also recommended that this Court direct ICE to schedule a custody review as to Boyce within thirty (30) days and require that ICE provide prior notice of such a review both to Boyce and his counsel. Id. This review would allow Boyce to offer any evidence that would support his release from ICE custody and that removal of Boyce to Panama is unlikely to occur in the reasonably foreseeable future. Id. at 11.

Objections to the Report and Recommendation were due by March 8, 2010. However, to date, no objections have been filed with this Court. For the purposes of judicial economy, we will not rehash the sound reasoning employed by Magistrate Judge Blewitt. However, we will specifically note that, as of the

present time, petitioner Boyce has been detained by ICE for nearly eighteen (18) months, since September 10, 2008. (Rec. Doc. No. 1 at 2). Of special concern is the fact that, while ICE conducted a custody review of Boyce's status on July 10, 2009 (Rec. Doc. No. 22, Exhbt. 5), after which it decided to continue detention, no such custody review has been conducted since. We agree with the magistrate judge that denial of petitioner Boyce's habeas petition is appropriate, as the petitioner has failed to provide any evidence that removal is unlikely to occur in the reasonably foreseeable future or that ICE custody has not met due process requirements. However, the length of time since Boyce's last custody review is unsettling; therefore, we agree with the magistrate judge's recommendation that ICE schedule a custody review as to Boyce within thirty (30) days of this order. Such a review will provide the petitioner with the opportunity to offer evidence supporting his request that he be released from custody and that removal is in fact unlikely to occur in the reasonably foreseeable future.

#### **CONCLUSION:**

Because neither party has elected to object to the Report and Recommendation, and because we agree with the magistrate judge's analysis and recommendation, we will adopt the Report and Recommendation in full. Therefore, we will deny Boyce's petition for habeas corpus. In addition, we will

direct ICE to schedule a custody review as to Boyce within thirty (30) days of the date of this order. ICE is further directed to notify the petitioner and his counsel in advance of the custody review.

s/ James F. McClure, Jr.  
James F. McClure, Jr.  
United States District Judge

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**ORDER**

March 9, 2010

**NOW, THEREFORE, IT IS ORDERED THAT:**

1. United States Magistrate Judge Blewitt's Report and Recommendation is **ADOPTED IN FULL**. (Rec. Doc. No. 26).
2. Petitioner Boyce's petition for writ of habeas corpus is **DISMISSED**. (Rec. Doc. No. 1).
3. United States Immigration and Customs Enforcement is directed to schedule a custody review as to Boyce within thirty (30) days of the date of this

order and is further directed to notify the petitioner and petitioner's counsel of the custody review in advance.

s/ James F. McClure, Jr.  
James F. McClure, Jr.  
United States District Judge